



Washington State Liquor Control Board
Licensing & Regulation Division
3000 Pacific Avenue SE
P.O. Box 43093
Olympia, WA 98504-3093

**DEFENDANT'S
EXHIBIT**

CASE
NO. C04-0360P

EXHIBIT
NO. 554

Case #: 03-6A-042

Resp to Costco RFP
1457

TYPE OF ADMINISTRATIVE ACTION

- ☒ Administrative Violation Notice - **LIQUOR**
☐ Administrative Violation Notice - **TOBACCO**
☐ Written Warning

Licensee Name Albertson's Inc.		License Number 077628	Class Grocery Store - Beer & Wine
Trade Name Albertson's No. 480			
Physical Address 6100 Pacific Ave SE		City Lacey	County Thurston
Mailing Address PO Box 20		Mailing City Boise	Mailing State & Zip ID 83706-0020
Violation: WAC 314-13-040 Do retail licensees have to sell liquor at a certain price? Retail liquor licensees must sell beer, wine, and spirituous liquor at or above the licensee's acquisition cost.			Observed X
Served On:		Position	Date & Time Served
Date & Time of Violation 11/16/03 12:40pm		Liquor Control Agent Jeanne Reschan	Agent Signature

Investigative Summary

This investigation was initiated due to a complaint received alleging northwest Washington Albertson's stores were conducting a three day sale 11/14-11/16/03 wherein customers that purchased six or more bottles of Beringer White Zinfandel and Beringer White Merlot would receive a 10% discount that put the sale price of these wines below acquisition cost.

I obtained an Albertson's newspaper advertisement that advertised a 3-day sale, Friday, Saturday & Sunday only, Nov. 14-16th. This ad advertised Beringer White Zinfandel & Beringer White Merlot at \$3.99 per bottle for Preferred Card customers. I checked the Board's price postings for the month of November. Black Hills Distributing, (license number 085355) which services Thurston county, and Western Washington Beverage, (license number 077164) which services Seattle and King County each had these wines posted at \$3.74 per bottle. If a retail customer purchased six bottles of these wines at \$3.99 each, the total cost would be \$23.94. A 10% discount would total \$2.40. \$23.94 minus \$2.40 equals \$21.54. The \$21.54 price of six bottles would put each bottle at a cost of \$3.60, which is below the posted price and acquisition cost of \$3.74 each.

On the morning of 11/14/03 I inspected the Olympia Albertson's store number 415 (license 074409). I found cardboard type six-bottle wine carriers placed in the store's wine section. These carriers contained wording advising the customer that a 10% discount would be given for the purchase of six bottles or more of 750 ml wine. Price tags for the Beringer White Zinfandel and Beringer White Merlot showed these wines on sale for \$3.99 each.

I telephoned Albertson's Northwest Division Beer/Wine Category Manager Brian E. Flemming. I advised him of the complaint received. He knew the posted price for the Beringer wines was \$3.74. He said these wines would not be sold below cost. Mr. Flemming said normally the Albertson's newspaper advertisements contained wording advising the customer that the 10% discount excludes some items, however this wording was not included in this week's ad. He said he would e-mail scan managers this date

DATE:

CASE #:

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to print up some in-store signage to advise customers that some advertised items were excluded due to state law. Mr. Flemming subsequently provided me with an example of a typical newspaper advertisement. This example contained the wording "Wine discount. Pick up an Albertson's 6-pack carrier and buy any 6 bottles of 750 ml. Wine to save 10% off retail. Some advertised items excluded due to state law". Mr. Flemming also sent me an example of wording for in-store signage that he would have placed in the stores. The example contained the wording "To Our Valued Customers: Due to State Law we are unable to offer 10% discounts on some advertised wines".

On the afternoon of 11/14/03 I inspected the Lacey Albertson's store number 480 (liquor license 077628). I observed a sign in the store wine section advertising a 10% discount on the purchase of six or more bottles of 750 ml. Wine. Six-bottle carriers were hanging on a rack below this sign. The carriers contained the same wording about the discount. I observed no disclaimer posted advising customers that this discount did not apply to some products.

On 11/15/03 at about 12:30pm I entered Albertson's No. 480 and went to the service counter. I completed a Preferred Card application and was issued a Preferred Card by the female clerk. I went to the wine section and observed no signage indicating the 10% discount did not apply to some items. I picked up a six-bottle carrier and picked up 3 bottles of Beringer White Merlot 750ml and 3 bottles of Beringer White Zinfandel 750ml. I placed them in the carrier and took them to a check out stand. A male wearing the nametag "Gabe" was working in this stand. He rang up the sale. I asked him if I got the 10%. He left the check out stand and went over to the service counter and picked up a hand-held calculator. He returned to the check out stand, made some calculations and totaled out my purchase. I gave him cash and he returned my change and gave me a receipt. I then exited the store with the wine, carrier, and receipt. The receipt listed six Beringer products at \$7.99 minus \$4.00 for preferred savings. The subtotal listed a tax charge of \$2.01 and balance of \$25.95. The next line listed a debit of \$2.60. The final total line listed a tax charge of \$1.79 and balance of \$23.13.

On 11/17/03 I called Mr. Flemming, advised him of my purchase, and faxed him a copy of the receipt. According to Mr. Flemming the sale price for each bottle of wine had been \$3.56, with a tax of \$1.79. According to Mr. Flemming, the store had purchased the wine at the posted price of \$3.74 per bottle. This put the \$3.56 per bottle sale price at below acquisition cost. Mr. Flemming said his solution to the problem would be to state in all advertisements that discounts do not apply to all items, and have checker notes for each checker employee stating what items were not subject to a discount.

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Washington State Liquor Control Board
Licensing & Regulation Division

Complaint Taken By: Jeanne Reschan
Date Complaint Made: 11/12/03
Complaint Number: 03-6A-042
Assigned To: J.Reschan per Randy Reynolds

REPORT OF COMPLAINT

PREMISES INVOLVED	Licensee: Albertson's Inc.	License No: 359092 (Master file)
	Trade Name: Albertson's No. 225	Phone No: (503) 251-9521
	Address: 450 Wilbur N	License Class: Grocery store
	Walla Walla 99362	
	Mailing: PO Box 20 Boise ID 83706-0020	
	Northwest Division, Brian Flemming;	
	17001 NE San Rafael St	
	Portland OR 97230	
	(503) 251-9521	
COMPLAINANT	Name: Anonymous	
	Phone No. Day:	Night:
	Is release of name authorized:	
NATURE OF COMPLAINT	Date/Time of Alleged Violation: 11/12/03 for 3 day sale 11/14-11/16/03.	
	Alleged Violation: Advertising the purchase of 6 bottles of Beringer White Merlot and Beringer White Zinfandel below cost for three day wine sale.	

Person Involved	Sex	Race	Age	Hgt	Wgt	Hair	Eyes	Involved How
Name:								
Name:								
Name:								
Name:								

AGENT'S SUMMARY/FOLLOW-UP INVESTIGATION

Agents have thirty days from receipt of complaint to investigate and report results to the Agent in Charge

DATE	TIME	
		I reviewed November price postings for two Beringer distributors. According to the Board's price posting data base, the lowest distributor price per bottle was \$3.74.
11/14/03	8:30-am	Inspected Albertson's Food Center 415 located in Olympia, liquor license 074409. I observed 750 ml Beringer White Merlot and White Zinfandel on sale for \$3.99 per bottle.
11/14/03	9:30-am	I observed some new price tags and posters placed on a table, ready to be posted. One poster indicated Albertsons was having a three day wine sale. No one was working in the area at the time. I observed empty card-board, six-bottle carriers placed out for Albertson's customers. Printed on the carriers was wording indicating if the customer purchased any six bottles of 750 ml wine they would receive a 10% discount.
11/14/03	10:55-am	Telephone contact with Albertson's Northwest Division beer/wine category manager Brian E. Flemming. Advised him of complaint received. He told me that the stores would not
		Sell below cost. He was aware that a 10% discount on Beringer White Merlot and White Zinfandel would put the price at below cost for these two wines. Flemming said they normally put wording such as "some items excluded do to state law" in their newspaper ads, however such wording was left off of this week's ad. Flemming said he would e-mail scan managers
		And contact the marketing group this date advising them to hang up notices in the stores so customers can see that some items are excluded do to state law. He also said he would e-mail me a copy of what he was sending out to the stores.
11/14/03	12:49-pm	I received an e-mail from Mr. Flemming containing an advertising sample which contained the wording "Wine Discount Pick up an Albertson's 6-pack carrier and buy any 6 bottles of 750 ml. Wine to save 10% off retail some advertised items excluded due to state law". I also received a copy of the wording for signs to be placed in the stores; "To our valued customers: Due to state law we are unable to offer 10% discounts on some advertised wines.

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		Case number 03-6A-042 Master file 359092
11/14/-03	4:40-pm	I inspected the Albertson's No. 480 (liquor license 077628) located in Lacey. I observed a sign in the wine section of the store stating 10% discount on the purchase of 6 or more bottles of 750 ml wine. Six-bottle carriers were placed on a rack under this sign. I saw no signage anywhere indicating this did not apply to some wines.
11/14/-03		I obtained a copy of an Albertson's newspaper advertisement advertising an Xtreme 3 Day Sale! Friday, Saturday & Sunday only Nov. 14 th -16 th . This ad contained a photo of two bottles of Beringer White Zinfandel wine with the printed words; 750 ml. Beringer White Zinfandel & White Merlot 3.99 preferred card price save up to 2.50 with card. This was a legal advertisement.
11/15/-03	12:30-pm	I entered Albertson's No. 480 and went to the service counter. I completed a preferred card application and was issued a preferred card by the female clerk. I went to the wine section and observed no signage indicating the 10% discount did not apply to some items. I picked up a six bottle cardboard carrier and picked up 3 bottles of Beringer White Merlot and 3 bottles of Beringer White Zinfandel. I placed them in the carrier and took them to a check out stand. A male with the name tag "Gabe" was working the stand. He rang up the sale. I asked if I got the 10%. He left the check out stand and went over to the service counter and picked up a hand-held calculator. He returned to the check out stand and made some calculations. I gave him cash and he returned my change and gave me a receipt. I left the store with the wine. The receipt semi total listed was \$25.95 minus \$2.01 in tax, and the balance listed was \$23.13 including a tax of \$1.79. By the receipt, the sale price of the wine was unclear.
11/17/-03	11:47-am	I telephone Brian Flemming and left a message requesting contact. I advised him I had purchased 6 bottles of wine.
11/17/-03	12:47-pm	Telephone contact with Flemming. I advised him I had purchased the wine at the Lacey Albertson's. We reviewed the receipt, and found it confusing. I subsequently faxed him a copy of the cash register receipt.
11/17/-03	2:20-pm	I received a call from Flemming. He advised me that the receipt showed the sale price of \$3.56 per bottle, with a total tax charge of \$1.79. He stated the store had purchased the wine at the posted price of \$3.74 per bottle. The sale price to me of \$3.56 per bottle was below acquisition cost. I advised Flemming I would contact retail enforcement about the violation and then advise him of any action taken.
11/17/-03		I contacted area enforcement officer Stacy Cutlip. He turned the case over to me. We agreed I would issue an AVN
11/18/-03	2:45-pm	Telephone contact with Brian Flemming. I advised him I would issue a violation notice to the Lacey Albertson's store, license number 077628. He advised me to issue the notice to the Boise head office.

☐ Unfounded ☐ Counseling ☐ Undercover Investigation Requested
☐ Verbal Warning ☐ Written Warning ☒ Administrative Violation Notice
Investigation Status ☐ Open ☒ Closed

Complainant Advised of Results No Date _____

If No, Explain Why: Anonymous

SIGNATURE OF AGENT/DATE

SIGNATURE OF SUPERVISOR/DATE

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TX554-004